

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5351

By Delegates Hornby, Hite, Horst, Forsht, and Hardy

[Originating in the Committee on Government

Organization; Reported on February 26, 2024]

1 A BILL to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended, relating to
2 amending the definition of a commercial solid waste facility to exclude a solid waste facility
3 in which the owner or operator of same is consolidating collected solid waste for
4 transportation and disposal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT

§22-15-2.

Definitions.

1 Unless the context clearly requires a different meaning, as used in this article the terms:

2 "Advanced recycling" means a manufacturing process for the conversion of post-use
3 polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals,
4 and other products like waxes and lubricants through processes that include pyrolysis,
5 gasification, depolymerization, catalytic cracking, hydrogenation, solvolysis, and other similar
6 technologies. The recycled products produced at advanced recycling facilities include, but are not
7 limited to, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished
8 chemicals, waxes, lubricants, coatings, and other basic hydrocarbons. Advanced recycling shall
9 not be considered solid waste management or solid waste disposal.

10 "Advanced recycling facility" means a facility that receives, stores, and converts post-use
11 polymers and recovered feedstocks it receives using advanced recycling. An advanced recycling
12 facility is a manufacturing facility subject to applicable department manufacturing regulations for
13 air, water, and land use. Advanced recycling facilities shall not be considered solid waste facilities.

14 "Agronomic rate" means the whole sewage sludge application rate, by dry weight,
15 designed:

16 (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover
17 crop, or vegetation on the land; and

18 (2) To minimize the amount of nitrogen in the sewage sludge that passes below the root
19 zone of the crop or vegetation grown on the land to the groundwater.

20 "Applicant" means the person applying for a commercial solid waste facility permit or
21 similar renewal permit and any person related to such person by virtue of common ownership,
22 common management, or family relationships as the director may specify, including the following:
23 Spouses, parents, children, and siblings.

24 "Approved solid waste facility" means a solid waste facility or practice which has a valid
25 permit under this article.

26 "Back hauling" means the practice of using the same container to transport solid waste and
27 to transport any substance or material used as food by humans, animals raised for human
28 consumption, or reusable item which may be refilled with any substance or material used as food
29 by humans.

30 "Bulking agent" means any material mixed and composted with sewage sludge.

31 "Catalytic cracking" is a manufacturing process through which post-use polymers are
32 heated and melted in the absence of oxygen and then processed in the presence of a catalyst to
33 produce valuable raw materials and intermediate and final products, including, but not limited to,
34 plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic
35 hydrocarbons.

36 "Class A facility" means a commercial solid waste facility which handles an aggregate of
37 between 10,000 and 30,000 tons of solid waste per month. Class A facility includes two or more
38 Class B solid waste landfills owned or operated by the same person in the same county, if the
39 aggregate tonnage of solid waste handled per month by such landfills exceeds 9,999 tons of solid
40 waste per month.

41 "Commercial recycler" means any person, corporation, or business entity whose operation
42 involves the mechanical separation of materials for the purpose of reselling or recycling at least 70
43 percent by weight of the materials coming into the commercial recycling facility.

44 "Commercial solid waste facility" means any solid waste facility which accepts solid waste
45 generated by sources other than the owner or operator of the facility and does not include an

46 approved solid waste facility owned and operated by a person for the sole purpose of the disposal,
47 processing, or composting of solid wastes created by that person or such person and other
48 persons on a cost-sharing or nonprofit basis and does not include land upon which reused or
49 recycled materials are legitimately applied for structural fill, road base, mine reclamation, and
50 similar applications, and does not include any solid waste facility that accepts solid waste collected
51 pursuant to and under a common carrier certificate of convenience and necessity issued by the
52 Public Service Commission by the owner or operator (or its affiliate(s)) of the solid waste facility for
53 consolidation and subsequent transport to a disposal or recycling facility: *Provided*, That the
54 owner or operator of the solid waste facility shall comply with §22-15-12 and §22-15-13 of this
55 code: *Provided, however*, That any such solid waste facility be located on a site that contains a
56 mixed waste processing and resource recovery facility that possesses a solid waste facility permit
57 from the Department of Environmental Protection.

58 "Compost" means a humus-like material resulting from aerobic, microbial, or thermophilic
59 decomposition of organic materials.

60 "Composting" means the aerobic, microbial, or thermophilic decomposition of natural
61 constituents of solid waste to produce a stable, humus-like material.

62 "Commercial composting facility" means any solid waste facility processing solid waste by
63 composting, including sludge composting, organic waste or yard waste composting, but does not
64 include a composting facility owned and operated by a person for the sole purpose of composting
65 waste created by that person or such person and other persons on a cost-sharing or nonprofit
66 basis and shall not include land upon which finished or matured compost is applied for use as a
67 soil amendment or conditioner.

68 "Cured compost" or "finished compost" means compost which has a very low microbial or
69 decomposition rate which will not reheat or cause odors when put into storage and that has been
70 put through a separate aerated curing cycle stage of 30 to 60 days after an initial composting cycle
71 or compost which meets all regulatory requirements after the initial composting cycle.

72 "Department" means the Department of Environmental Protection.

73 "Depolymerization" means a manufacturing process where post-use polymers are broken
74 into smaller molecules such as monomers and oligomers or raw, intermediate, or final products,
75 plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings,
76 and other basic hydrocarbons.

77 "Energy recovery incinerator" means any solid waste facility at which solid wastes are
78 incinerated with the intention of using the resulting energy for the generation of steam, electricity,
79 or any other use not specified herein.

80 "Gasification" means a manufacturing process through which recovered feedstocks are
81 heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the
82 mixture is converted into valuable raw materials and intermediate and final products, including, but
83 not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks,
84 and other basic hydrocarbons that are returned to economic utility in the form of raw materials and
85 products.

86 "Hydrogenation" is a manufacturing process through which hydrogen is used to remove
87 impurities from post-use polymers or recovered feedstock to enable further processing into
88 valuable raw materials and intermediate and final products, including, but not limited to, plastic
89 monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic
90 hydrocarbons.

91 "Incineration technologies" means any technology that uses controlled flame combustion
92 to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains
93 little or no combustible materials, regardless of whether the purpose is processing, disposal,
94 electric or steam generation, or any other method by which solid waste is incinerated.

95 "Incinerator" means an enclosed device using controlled flame combustion to thermally
96 break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no
97 combustible materials.

98 "Landfill" means any solid waste facility used for the disposal of solid waste on or in the
99 land for the purpose of permanent disposal. Such facility is situated, for purposes of this article, in
100 the county where the majority of the spatial area of such facility is located.

101 "Materials recovery facility" means any solid waste facility at which source-separated
102 materials or materials recovered through a mixed waste processing facility are manually or
103 mechanically shredded or separated for purposes of reuse and recycling, but does not include a
104 composting facility.

105 "Mature compost" means compost which has been produced in an aerobic, microbial, or
106 thermophilic manner and does not exhibit phytotoxic effects.

107 "Mixed solid waste" means solid waste from which materials sought to be reused or
108 recycled have not been source-separated from general solid waste.

109 "Mixed waste processing facility" means any solid waste facility at which materials are
110 recovered from mixed solid waste through manual or mechanical means for purposes of reuse,
111 recycling, or composting.

112 "Municipal solid waste incineration" means the burning of any solid waste collected by any
113 municipal or residential solid waste disposal company.

114 "Open dump" means any solid waste disposal which does not have a permit under this
115 article, or is in violation of state law, or where solid waste is disposed in a manner that does not
116 protect the environment.

117 "Person" or "persons" means any industrial user, public or private corporation, institution,
118 association, firm, or company organized or existing under the laws of this or any other state or
119 country; State of West Virginia; governmental agency, including federal facilities; political
120 subdivision; county commission; municipal corporation; industry; sanitary district; public service
121 district; drainage district; soil conservation district; watershed improvement district; partnership;
122 trust; estate; person or individual; group of persons or individuals acting individually or as a group;
123 or any legal entity whatever.

124 "Post-use polymer" means a plastic to which all the following apply:

125 (1) The plastic is derived from any industrial, commercial, agricultural, or domestic
126 activities;

127 (2) It is not mixed with solid waste or hazardous waste onsite or during processing at the
128 advanced recycling facility;

129 (3) The plastic's use or intended use is as a feedstock for the manufacturing of plastic and
130 chemical feedstocks, other basic hydrocarbons, raw materials, or other intermediate products or
131 final products using advanced recycling;

132 (4) The plastic has been sorted from solid waste and other regulated waste but may
133 contain residual amounts of solid waste such as organic material and incidental contaminants or
134 impurities (e.g., paper labels and metal rings); and,

135 (5) The plastic is processed at an advanced recycling facility or held at such facility prior to
136 processing.

137 "Publicly owned treatment works" means any treatment works owned by the state or any
138 political subdivision thereof, any municipality or any other public entity which processes raw
139 domestic, industrial, or municipal sewage by any artificial or natural processes in order to remove
140 or so alter constituents as to render the waste less offensive or dangerous to the public health,
141 comfort, or property of any of the inhabitants of this state before the discharge of the plant effluent
142 into any of the waters of this state, and which produces sewage sludge.

143 "Pyrolysis" means a manufacturing process through which post-use polymers are heated
144 in the absence of oxygen until melted and thermally decomposed and are then cooled,
145 condensed, and converted into valuable raw materials and intermediate and final products,
146 including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical
147 feedstocks, and other basic hydrocarbons, that are returned to economic utility in the form of raw
148 materials or products.

149 "Recovered feedstock" means one or more of the following materials that has been
150 processed so that it may be used as feedstock in an advanced recycling facility:

151 (1) Post-use polymers;

152 (2) Materials for which the United States Environmental Protection Agency has made a
153 nonwaste determination pursuant to 40 C.F.R. 241.3(c), or has otherwise determined are
154 feedstocks and not solid waste;

155 (3) Recovered feedstock does not include unprocessed municipal solid waste;

156 (4) Recovered feedstock is not mixed with solid waste or hazardous waste onsite or during
157 processing at an advanced recycling facility.

158 "Recycling facility" means any solid waste facility for the purpose of recycling at which
159 neither land disposal nor biological, chemical, or thermal transformation of solid waste
160 occurs: *Provided*, That mixed waste recovery facilities, sludge processing facilities, and
161 composting facilities are not considered recycling facilities nor considered to be reusing or
162 recycling solid waste within the meaning of this article, §22-15A-1 *et seq.* and §22C-4-1 *et seq.* of
163 this code.

164 "Sewage sludge" means solid, semisolid, or liquid residue generated during the treatment
165 of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic
166 septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment
167 processes and a material derived from sewage sludge. "Sewage sludge" does not include ash
168 generated during the firing of sewage sludge in a sewage sludge incinerator.

169 "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge
170 for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes
171 include, but are not limited to, composting, lime stabilization, thermophilic, microbial, and
172 anaerobic digestion.

173 "Secretary" means the Secretary of the Department of Environmental Protection or such
174 other person to whom the secretary has delegated authority or duties pursuant to §22-1-1 *et seq.*
175 of this code.

176 "Sludge" means any solid, semisolid, residue, or precipitate, separated from or created by
177 a municipal, commercial, or industrial waste treatment plant, water supply treatment plant, air
178 pollution control facility, or any other such waste having similar origin.

179 "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for
180 the express purpose of incineration; sludge from a waste treatment plant; water supply treatment
181 plant or air pollution control facility; and other discarded materials, including offensive or unsightly
182 matter, solid, liquid, semisolid, or contained liquid or gaseous material resulting from industrial,
183 commercial, mining, or community activities but does not include solid or dissolved material in
184 sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are
185 point sources and have permits under §22-5A-1 *et seq.* of this code, or source, special nuclear, or
186 byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any
187 nuclear or byproduct material considered by federal standards to be below regulatory concern, or
188 a hazardous waste either identified or listed under §22-5E-1 *et seq.* of this code or refuse, slurry,
189 overburden, or other wastes or material resulting from coal-fired electric power or steam
190 generation, the exploration, development, production, storage, and recovery of coal, oil, and gas,
191 and other mineral resources placed or disposed of at a facility which is regulated under Chapter
192 22, Chapter 22A, or Chapter 22B of this code, so long as placement or disposal is in conformance
193 with a permit issued pursuant to such chapters, or post-use polymers and recovered feedstocks
194 converted at an advanced recycling facility or held at such facility prior to conversion.

195 "Solid waste disposal" means the practice of disposing of solid waste including placing,
196 depositing, dumping, throwing, or causing any solid waste to be placed, deposited, dumped, or
197 thrown.

198 "Solid waste disposal shed" means the geographical area which the solid waste
199 management board designates and files in the state register pursuant to §16-26-8 of this code.

200 "Solid waste facility" means any system, facility, land, contiguous land, improvements on
201 the land, structures, or other appurtenances or methods used for processing, recycling, or
202 disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed
203 waste processing facilities, sewage sludge processing facilities, commercial composting facilities,
204 and other such facilities not herein specified, but not including land upon which sewage sludge is
205 applied in accordance with §22-15-20 of this code. Such facility shall be deemed to be situated, for
206 purposes of this article, in the county where the majority of the spatial area of such facility is
207 located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of §17-23-1
208 *et seq.* of this code, is not a solid waste facility and an advanced recycling facility is not a solid
209 waste facility.

210 "Solid waste facility operator" means any person or persons possessing or exercising
211 operational, managerial, or financial control over a commercial solid waste facility, whether or not
212 such person holds a certificate of convenience and necessity or a permit for such facility.

213 "Solvolysis" means a manufacturing process through which post-use polymers are purified
214 with the aid of solvents, while heated at low temperatures and/or pressurized to make useful
215 products, allowing additives and contaminants to be separated. The products of solvolysis include
216 monomers, intermediates, valuable chemicals, and raw materials. The process includes, but is not
217 limited to, hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

218 "Source-separated materials" means materials separated from general solid waste at the
219 point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

NOTE: The purpose of this bill is to amend the definition of "commercial solid waste facility" to exclude any solid waste facility that accepts solid waste collected by the owner or operator (or its affiliate(s)) of the solid waste facility for consolidation and subsequent transport to a disposal or recycling facility.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.